

BY FAX: 914-390-4095

August 8, 2008

Hon. Judge George A. Yanthis
United States Magistrate Judge
United States District Court
Southern District of New York
300 Quarropas St., Room 118
White Plains, NY 10601

Re: John A. Bellantoni, et ano. v. General Motors Corporation, et
ano.

U.S. District Court/Southern District of New York
Case Number: 08 CV 240 (CLB)
Docket in case # CV/CR

Dear Hon. Judge Yanthis:

As: letter
Date: 8/22/08

I wish to comment as per the court's instructions with respect to the form of the Protective Order that may be entered by this Court in this action.

I attach hereto a redlined copy of the Protective Order that contains the accepted changes between the parties. The changes not agreed to are indicated in redline formatting.

I refer the Court to the previously submitted letter to this Court that establishes the limits of a protective order and demonstrates clearly the obligation of the defendant to meet its burden of proof in seeking protected status for any specific or type of document.

Defendant seeks to limit Plaintiff's desire to exchange information and communicate with any appropriate governmental agency that may have jurisdiction over this matter, including the Consumer Products Safety Commission or the National Highway Transportation Safety Board or other agencies that may have regulatory jurisdiction over some or all of the issues presented in this case. This attempt to restrict and limit disclosure of information and processing of the same by appropriate governmental bodies having regulatory jurisdiction is improper. Firstly, defendants may or may not have properly disclosed all information to a newly formed governmental body. In addition, the data base and influence of the automotive industry in the operations of the database and having

influence in how it is administered have raised serious concern amongst consumer groups. The Tread Act was signed into law by President Clinton on November 1st, 2000, and has been incorporated into the existing National Traffic and Motor Vehicle Safety Act of 1966, codified at 49 U.S.C. §§ 30101-30170. I note the following public comment regarding the administration and implementation of the Act:

Outraged about auto industry cover-ups and the failure of federal regulators to catch safety defects in Firestone tires and Ford Explorers before hundreds of people were killed, in 2000 Congress enacted a landmark new auto safety bill, the Transportation, Recall Enhancement, Accountability and Documentation (TREAD) Act. At the heart of the TREAD Act is a new authority for regulators to collect timely reports from manufacturers that will provide an "early warning" of a dangerous defect, thereby saving lives.

Congress envisioned a database where members of the public could look to see if they were experiencing a similar problem, to encourage a much quicker fix. Congress thought more accountability for the government was a good idea, too, so that federal investigations couldn't fester or files get lost while people on the road remained at risk, as happened in the Ford/Firestone case with documents submitted by State Farm and all throughout the 1990s.

While regulators at the National Highway Traffic Safety Administration (NHTSA) have been busy building the database, however, the chief counsel's office has been busy covering it up, so that only the agency and the industry will know what's in it. Under a new rule just announced last month, the only tip of the information iceberg that will be permitted to poke above the surface is the data on injuries and deaths. Other quarterly information given to the agency, including consumer complaints to manufacturers, warranty claims, and field reports from dealers, will be kept in the dark.

Consumer groups recently filed a petition opposing the agency's decision to keep the data secret, challenging the decision under the Freedom of Information Act. They also pointed out that the early warning database will be a terrific quality control program for the whole industry, and that consumers will be likely to provide more feedback on defects with a robust public program.

Secrecy in this case helps out both the agency and the industry, as both might be subject to questions and inquiries from information-empowered consumers who raise questions about defective and dangerous vehicles. But keeping the early warning data a secret plays a dirty trick on Congress and

the American driving public, who think that problems that lead to the Ford/Firestone tragedy have been fixed.

See blog and editorial on website of Public Citizen a non-profit group dedicated to protecting the public interest.

In addition to the foregoing, the Tread Act was enacted primarily to deal with issues of vehicle rollovers and tread separation on tires. This Act does not fully protect or mandate removal of all products that are dangerous or that are made dangerous through inadequate construction and improper warnings.

The Consumer Product Safety Commission and the Federal Trade Commission as well as other similar state agencies have regulatory jurisdiction over defective consumer products. Defendant desires to quash the dissemination of information related to defective products. They should not be permitted to do so.

Moreover, by definition the Act relates more to crashworthiness and rollover cases and will not properly protect the public interest in protecting them from what is essentially a "spring gun" concealed in the mirror assembly of an automobile without warning or notice to any member of the public performing work on their automobiles.

Plaintiff has submitted a Proposed Protective Order that I believe protects the public and government's right to keep unsafe products out of the stream of commerce. Defense counsel seeks to limit the protection of the public and restrict the operation of appropriate governmental agencies that may have regulatory jurisdiction in this area. Defendant GM has not met its burden in this regard and the Court should issue an order in the form requested by Plaintiff.

I thank the court for its courtesy and attention to this matter.

Sincerely yours,


JONATHAN RICE

JR/jr

cc: Robyn M. Gnudi, Esq., FAX #(973) 491-3555
Brian K. Telfair, Esq., FAX #(804) 783-2294
Joe Redd, Esq., FAX #(914) 328-3184

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN A BELLANTONI and MARIA T.
BELLANTONI, His Wife,

Plaintiffs,

08-CV-2407

-against-

Honorable C.L. Bricant

GENERAL MOTORS CORPORATION and
CHAMPION CARRIER CORP.,

Defendants.

PROTECTIVE ORDER FOR DOCUMENTS

On this day, came Defendant GENERAL MOTORS CORPORATION ("GM") requesting that the Court to enter a Protective Order to protect confidential, proprietary and trade secret documents pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure. The Court notes that GM expects to produce to Plaintiffs, Co-Defendant Champion Carrier Corp., and/or any additional party added to this lawsuit certain information which GM considers to be confidential information and trade secrets. GM desires that its confidential information and trade secrets be protected by an appropriate protective order. Non-confidential documents and documents that are not trade secrets are not intended to be protected herein. Documents subject to this protective order do not include: documents available in the chain of commerce from sources other than GM; documents available to the public; documents previously disclosed in any action

or proceeding that were determined to not be confidential documents; and documents that the court determines are not confidential.

Upon consideration of the foregoing and subject to the right of any party to apply to modify this order at a later date to challenge the alleged protected status of any document, the Court finds good cause for a Protective Order to protect confidential, and trade secret documents pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure subject to the requirement that GM in good faith establish the bona fides of its desire for protection for such documents.

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IT IS, THEREFORE, ORDERED that the following procedure shall govern the production, use and disposal of the confidential documents and information.

1. Designation of Confidential Documents and Information.

GM shall mark confidential documents as "Produced Pursuant to Protective Order" and/or "GM Confidential" in accordance with the provisions of this Order. This Order shall apply to documents produced throughout the pendency of this lawsuit. The documents and information contained therein shall only be used, shown and disclosed as provided in this Order. The terms "Produced Pursuant to Protective Order" and "GM Confidential" shall be construed to include all of the information contained in each document so marked. Documents "Produced Pursuant to Protective Order" and/or marked as "GM Confidential" will not include any documents which have been publicly disclosed by GM or produced by GM in other litigation without being subject to a similar confidentiality order or

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introduced as exhibits at trial without being under seal or subject to a similar confidentiality order.

2. Access to Confidential Documents and Information by Counsel and the Parties.

Confidential documents and information shall be made available only to "qualified persons." The term "qualified persons" means the Court and its officers, the parties, their counsel and those paralegals, stenographic and clerical employees employed by counsel of record who have read the provisions of this order and have agreed to be bound by it; experts retained by counsel; members of counsel's trial or trial preparation team and witnesses who may appear and testify in this case at either depositions or in the trial of this action. No other person shall have

Comments: Defendant claims this is covered by Para. 4. I disagree and want things spelled out.

access to confidential documents or information without the advance written approval of GM or future order of this Court. No person who gains access to confidential documents or information may disclose their contents or information contained in them to any other person without the prior written approval of GM or the Court.

3. Access to Confidential Documents and Information by Experts or Consultants.

Independent experts and/or consultants (i.e., non-testifying and testifying experts) retained by Plaintiffs, Co-Defendant Champion Carrier Corp., or any additional party added to this lawsuit may be included as "qualified persons" if they have executed a certification that they have read this protective order and agree to be bound by the terms and conditions thereof. An executed original of that

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certification shall be obtained by counsel of record for Plaintiffs, Co-Defendant Champion Carrier Corp., or any additional party added to this lawsuit before such persons are given access to confidential documents. All such certifications shall be maintained by counsel of record until such time as this action has been concluded and all confidential documents are returned to GM. A form of certification is attached hereto as "Exhibit A."

4. Challenges to Claims of Confidentiality.

If a party contends that any documents, information or portions of them which another party or third party has designated as confidential are not entitled to protection, the challenging party may challenge such designation by letter, and in that event GM will be required to file a motion to determine the designation. GM bears the burden of establishing that the challenged documents should be designated as "Produced Pursuant to Protective Order" and/or "GM Confidential." The documents and information shall remain confidential until their status is changed by stipulation or order. Before a hearing on the motion, the parties shall attempt to resolve the dispute.

5. Documents Produced Under Protective Order at Trial.

GM may seek to extend the protection for documents and information deemed confidential to trial proceedings by stipulation with all parties, ex parte application, or motion in *limine*.

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6. Use of Confidential Documents and Information Generally.

Confidential documents and information may be used for any lawful purpose not inconsistent with the terms of this Protective Order. Nothing herein shall limit public disclosure and reporting of the facts of this case including but not limited to disclosure to the agencies or departments of any State or Federal government that has jurisdiction over the issues herein including but not limited to: the Consumer Products Safety Commission; the National Highway Transportation Safety Board or other similar state agency or body.

Comment: Defendant does not agree, Sec Tread Act. Affirmative duty to report. Manufacturers are put on notice and report that particular claim to congress and to maintain records.

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7. Use of Confidential Documents and Information in This Lawsuit.

Confidential documents or information may be used at depositions, in accordance with the following safeguards. If such confidential documents and information are used in depositions, all portions of the transcript of such depositions, and exhibits thereto which refer to or relate to such confidential documents or information, shall themselves be considered as confidential documents except if such information bears directly on the issue of negligent design, construction, breach of warranty, failure to warn or strict liability in tort and the public interest supports protections and disclosure of unsafe products. The party seeking to protect the confidential documents and information at deposition shall request that the court determine that what portions of the transcript are confidential and thereafter ensure that the court reporter binds the confidential portions of the transcripts and exhibits separately and labels them "confidential." In addition, the deponent is deemed to be ordered that, pursuant to this protective order, he or she may not divulge any

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Comment: Defendant does not agree

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such confidential documents or information except to qualified persons. The use or introduction of confidential documents or information as exhibits at deposition shall not constitute a waiver of their confidential status if the procedures in this paragraph are followed, and under such circumstances documents shall continue to be subject to the protections afforded by this order. Notwithstanding anything to the contrary herein, no expert or deponent shall be prohibited from reporting or disclosing the existence and nature of an unsafe product and reporting the same to any governmental agency or watchdog group advocating for the public interest and protection of consumers.

Comments: Defendant disagrees with this proposal by plaintiff.

8. Filing and Sealing.

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When a party files confidential documents, things and information, including confidential portions of any transcript, the party shall file them in sealed envelopes or other appropriately sealed containers which shall be endorsed with the title of this action and a statement substantially in the following form:

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"Filed Under Seal Pursuant to Protective Order"

The envelope or container shall not be opened or released to anyone other than the qualified persons without further order of the Court. The clerk of the Court is hereby directed to maintain such confidential documents and information in a separate portion of the court files not available to the public.

9. Return at the Conclusion of this Action.

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Upon written request by the party producing such confidential documents, within forty-five (45) days of the conclusion of this action, counsel of record shall return

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all confidential documents and information, and all copies thereof, to the counsel for GM. If any confidential documents are furnished to any expert or to any other qualified person, the attorney for Plaintiffs and/or Co-Defendant Champion Carrier Corp., and/or any additional party added to this lawsuit, shall ensure that all confidential documents in the possession of such persons, and all copies thereof, are either destroyed or returned to counsel for GM within forty-five (45) days of written request made after the conclusion of this action. The parties are permitted to retain a list of the documents by bates number which are produced by GM under this protective order.

10. Translations, Partial Translations and Summaries.

It is anticipated by the parties that Plaintiffs and/or Co-Defendant Champion Carrier Corp. and/or any additional party added to this lawsuit and their representatives may prepare English translations, partial translations or summaries which either restate or paraphrase the contents of confidential documents and information produced by GM under this Order. The terms "translations" or "summaries" as used in this paragraph include any documents which purport to be a reliable representation of the specific content of the privileged material contained in the confidential documents produced by GM. The parties may retain such translations, partial translations and summaries following the conclusion of this case provided that they provide to counsel for GM copies of each such translation, partial translation or summary which they wish to retain at the same time any confidential documents are returned or destroyed pursuant to the terms of

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this Order. Each such copy shall be marked "confidential" in accordance with the terms of this Order. All translations, partial translations or summaries, and all copies thereof, which the parties do not wish to retain following the conclusion of this case, shall be destroyed by counsel for the parties. The protective order and the provisions of this paragraph shall not apply to documents or portions of documents that comprise notes, analysis, mental impressions or strategy of the parties' counsel with respect to the documents produced. In particular, the term "summaries" shall not include any attorney work product notes, memoranda or attorney analysis of the documents produced.

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11. Amendments.

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Nothing in this Order will prejudice any party from seeking amendments broadening or restricting the rights of access to and the use of confidential documents or information, or contesting the designation of a confidential document or qualified person.

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IT IS SO ORDERED this ____ day of _____, 2008.

JUDGE

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Robyn M. Gnudi
LECLAIRRYAN
Two Penn Plaza East
Newark, New Jersey 07105
Phone: (973) 491-3600
Fax: (973) 491-3555
830 Third Avenue, Fifth Floor
New York, New York 10022
Phone: (212) 430-8020
Fax: (212) 430-8079

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And

Brian K. Telfair (Admitted *Pro Hac Vice*)
Antoinette N. Morgan (*Pro Hac Vice* admission pending) -
LECLAIRRYAN
Riverfront Plaza, East Tower
951 East Byrd Street, 8th floor
Richmond, Virginia 23219
(804) 783-2003
(804) 783-2294 (facsimile)

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Counsel for General Motors Corporation

SEEN AND AGREED:

Jonathan Rice, Esq.
247 West 35th Street, 12th Floor
New York, New York 10001
(212) 465-1890
(212) 629-3055

Counsel for Plaintiffs

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Joseph T. Redd, Esq.
O'Connor Redd, LLP
200 Mamaroneck Avenue
White Plains, New York 10601
(914) 686-1700
(914) 328-3184

Counsel for Champion Carrier Corp.

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